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July 6, 2018

Via ECF

Hon. J. Paul Oetken, U.S.D.J. (S.D.N.Y.)
40 Foley Square, New York NY 10007

Re: *Rubenstein v. Berkowitz et. al., No. 1:17 Civ. 00821-JPO (S.D.N.Y.): Status Update (Service of Process on SAC Defendants)*

Dear Judge Oetken:

Pursuant to the Court's May 17, 2018 Order (Dkt. No. 71), I write to advise the Court as to the status of service on the Defendants named in the Second Amended Complaint ("SAC") (Dkt. No. 38).

The SAC was filed on March 8, 2018, to remove the Fairholme Defendants and substitute 14 individual Fairholme Clients as the named Defendants allegedly liable for the short swing profits realized as a result of the Sears trading identified by Plaintiff. In their letter motion filed on May 15, 2018, the 14 individual Client Defendants named in the SAC advised the Court (as they had previously advised Plaintiff's counsel) that they were all collectively represented by the same counsel for the formerly-named Fairholme Defendants, and together requested an extension of time to respond to the SAC until 30 days after all of the 14 individual Defendants have been served. (Dkt. No. 69). The Court's May 17 Order granted that motion and asked the parties to provide this update as to the status of service.

The 14 individual Fairholme Clients consist of 10 individuals who are U.S. residents, and 4 individuals who are foreign residents. Plaintiff advises the Court that all 10 U.S. residents were served as of June 7, 2018. Because the U.S. Defendants refused to execute waivers of service, Plaintiff has requested reimbursement of the costs of personal service pursuant to Rule 4, which Defendants' counsel has agreed will be paid by the end of next week (or by Friday, July 13, 2018). Plaintiff reserves the right to move for reimbursement of Rule 4 service costs if payment is not received in due course.

The 4 foreign Defendants are: Thomas Brunner (Switzerland) and Eva, Heinz, and Charlotte Wiezorek (Germany).

Plaintiff engaged a foreign process server to all 4 foreign Defendants on May 8, 2018. On May 31, 2018, Mr. Brunner contacted Plaintiff's counsel through a separate attorney to acknowledge receipt of the SAC and agreed to settle the claims asserted against him (without an admission of underlying liability). Plaintiff anticipates that the settlement will be complete and a Notice of Voluntary Dismissal as to Thomas Brunner will be filed within 30 days, or on or before August 6, 2018.

Service on Eva Wiezorek was completed in Germany on June 18, 2018, and Plaintiff received proof of service on June 29, 2018. Plaintiff is in the process of translating the proof of service received as to Eva Wiezorek and expects to receive and file the translated proof next week (on or before Friday, July 13, 2018).

The two Defendants that remain to be served are Heinz and Charlotte Wiezorek who reside together at the same address in Germany. (Although Heinz and Charlotte Wiezorek were initially identified as residing together with Eva Wiezorek, their counsel subsequently provided Plaintiff's counsel with a different Germany address for Heinz and Charlotte). Plaintiff has requested, but has not received, a status update from the foreign authorities regarding service on Heinz and Charlotte Wiezorek at the address supplied by their counsel.

Given that all of the Defendants (other than Thomas Brunner, who has agreed to settle)—including Heinz and Charlotte Wiezorek—are represented by the same attorneys at Seward & Kissel, Plaintiff respectfully suggests that this case might proceed pending proof of service on Heinz and Charlotte Wiezorek, and that counsel for Heinz and Charlotte Weizorek might encourage their two clients to waive service in order to avoid further undue delay in fully adjudicating this case.

Alternatively, Plaintiff proposes to provide the Court with another update regarding the status of service on the remaining two foreign Defendants (and any other outstanding issues) in 30 days, or by August 6, 2018.

Respectfully submitted,

s/ Miriam Tauber

Miriam Tauber (MT-1979)
Attorney for Plaintiff

cc: all counsel (via ECF)